IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.894 OF 2006

Waman R.Amraskar ..Petitioner

Vs.

Blow Plast Ltd. ..Respondents

Ms.Hutoxi Tawadia i/b M.M.Thorat for the petitioner

Mr.Shirish Naik for the respondents

CORAM : S.U.KAMDAR, J
DATED : 19TH APRIL, 2006

P.C.:

1. The present petition is filed challenging the order dt.31.12.04 passed by the Third Labour Court, Bombay. By the impugned order, the Labour Court has given a finding that the petitioner has failed to establish the master-servant relationship between the petitioner and the respondent company and therefore the said reference is not maintainable and the same has been dismissed.

2. The learned counsel for the petitioner has

in support of the contention that there exist a master servant relationship has taken me afresh through the entire oral and documentary evidence which is forming part of the present petition. She has taken me through Ex.'E' onwards. The documents at Ex.'E', Ex.'F' and Ex.'G' are ESIC Cards and ESIC forms. The documents at Ex.'H' onwards are the overtime vouchers. These are the only documentary evidence produced by the petitioner in support of his contention that he is an employee of the respondent. The learned counsel for the petitioner has further taken me through the oral evidence of both the petitioner and the Manager of the contractor of one M/s.Shetty Enterprises. She has contended that the respondent's case that the petitioner was an employee of the contractor has not been established because the contract between the company and the Shetty Enterprises has not been brought on record. In so far as this question is concerned, the Trial Court has adverted to the documents as well as the oral evidence which was placed before it. After considering the oral evidence, a finding has been recorded that the petitioner has failed to establish a master servant

relationship and therefore the complaint is not maintainable.

3. I have perused the documents produced. From the documents it is not established that the petitioner is an employee of the respondent corporation. Merely because the name of the petitioner as well as the name of the respondents is mentioned on the ESIC card that does not establish a master servant relationship. On the other hand, the respondents have produced a muster roll as well as wage register of M/s.Shetty Enterprises and it has been revealed that in fact the name of the petitioner was on a muster roll of the said contractor M/s. Shetty Enterprises and also on wage register. The said wage register is for the period 1992-93 and the muster roll is for the period 1990-93. The documents produced indicates that the petitioner was infact an employee of the contractor. In my opinion, merely by non production of the contract between the respondent and M/s.Shetty Enterprises no interference can be drawn that the petitioner was in fact an employee of the respondent company. The

burden of proof essentially is on the petitioner to discharge by showing that there exist a master servant relationship between the petitioner and the respondents. The learned counsel has contended that the fact that the petitioner was working on the premises of the respondent itself is sufficient to discharge the burden to establish that the petitioner was an employee of the respondent. In my opinion, the aforesaid contention is devoid of any merits and cannot be accepted.

4. In view thereof, I am of the opinion that on the perusal of the order impugned herein and going through the assessment of evidence by the Trial Court, it cannot be said that the finding arrived at by the Trial Court that there is no master servant relationship is perverse or there is any error apparent on the face of the record which enables me to interfere with the same under article 226 of the Constitution of India. Petition is accordingly dismissed. No order as to costs.